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No. 01-1352

In The

Supreme Court of the United States

GENERAL MOTORS CORPORATION AND
DAIMLER CHRYSLER CORPORATION,

Petitioners,

vs.

THE CITY OF SEATTLE,

Respondent.

**On Petition For A Writ Of Certiorari
To The Washington Court Of Appeals**

RESPONDENT'S BRIEF IN OPPOSITION

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RELEVANT LAW INVOLVED

In addition to the relevant laws set out in the Petition, Seattle Business Tax Rule 5-44-193A, omitted by Petitioners, is set out in Appendix A.

STATEMENT OF THE CASE

This case concerns nothing more than the straightforward application of *Tyler Pipe Industries, Inc. v. Washington State Dep't of Revenue*, 483 U.S. 232, 107 S.Ct. 2810, 97 L.Ed.2d 199 (1987) to the taxation of gross proceeds of sales of cars and parts delivered to Seattle as a result of Petitioners' market-making activities in the City. The decision is consistent with all prior precedents, and presents no question of substantial public importance.

Seattle's Tax System

Petitioners claim that Seattle law subjects them to tax on the entire gross income from "all sales related to any" one of what they describe as "selling activities, wherever performed" and regardless of where the goods are delivered.[1] That is not true.

The City of Seattle imposes a gross receipts tax on interstate sales only when the seller's business activities in the City are either "a determining element in the

[1] Pet. at 2, 11.

transaction or, under the facts and circumstances, a significant factor in making or holding the market here" and the goods are received in Washington. Seattle Municipal Code 5.44.422(A), Seattle Business Tax Rule ("SBTR") 5-44-193A(3). Seattle "does not assess its retailing or wholesaling taxes on the sale of goods . . . if receipt of the goods by the purchaser or its agent occurs outside Washington." SBTR 5-44-193A(3). Mere delivery of the goods, "without accompanying efforts to maintain an economic market" in the City, is not sufficient to impose the tax. Seattle Municipal Code 5.44.422(A). When both receipt and market-making activity occur in Seattle, Seattle measures the tax by 100 percent of the gross proceeds of the sale. Seattle Municipal Code 5.44.400(C).

The State of Washington taxes interstate sales in exactly the same way: both receipt of the goods by the purchaser and market-making activity by the seller must occur in Washington. WAC 458-20-193(7), (2)(f). When both receipt and market-making activities occur in Washington, Washington measures the tax by 100 percent of the gross proceeds of the sale. Revised Code of Washington 82.04.270.

Under both Seattle and Washington law, receipt occurs when the purchaser, or an agent having the authority to refuse or accept the goods, first takes physical possession of them or exercises physical dominion or control over them. SBTR 5-44-193A(2)(d); WAC 458-20-193(2)(d). A freight forwarder can receive goods on behalf of a buyer, but only if the carrier has written

authorization to accept or reject them. SBTR 5-44-193A(3)(b); WAC 458-20-193(7)(a); Pet., App. A at 18a.[2]

SBTR 5-44-193A or its equivalent was in force during each of the years at issue in this case. GM[3] Exh. 14. SBTR 5-44-193A is based upon the State of Washington WAC 458-20-193, formerly WAC 458-20-193A and B. Prior to 1997, SBTR 5-44-003 ("Measuring the Amount of Tax") referred taxpayers to those state rules. GM Exh. 14. In 1997, Seattle adopted the state rules in its own rule 5-44-193A.

The City of Seattle applied SBTR 5-44-193A to Petitioners, requesting proof that the cars and parts were delivered for receipt outside Seattle, specifically requesting proof of the carrier's "right to accept or reject the Chrysler or General Motors goods on behalf of the Seattle dealer." GM Exh. 15, Request Nos. 16 and 18. In response, Petitioners dropped the claim that the cars and parts were delivered elsewhere. "[T]his contention will be dropped from the contentions listed in General Motors' Petition." GM Exh. 15, Response to Request No. 16. Petitioners, however, make no mention of SBTR 5-44-193A at all in the Petition, simply ignoring a critical provision of the law under which they were taxed.

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[2] Whether cars and parts are shipped f.o.b. factory has no bearing on the determination of whether they were delivered in Washington.

[3] The cases were tried separately but concurrently and consolidated at the Court of Appeals. For General Motors, the clerk's papers are referenced by CP GM, the hearing transcript by GM Tr., and the exhibits by GM Exh. For Chrysler, the clerk's papers are referenced by CP Chry., the hearing transcript by Chry. Tr., and the exhibits by Chry. Exh.

Petitioners rely for their erroneous statement of Seattle law on SBTR 5-44-002, the fact that the City has not adopted the equivalent of Washington Administrative Rule WAC 458-20-103, and testimony of Mr. McDonald, Seattle's tax administrator. None supports Petitioners' statement.

First, the Court of Appeals ruled that SBTR 5-44-002 simply illustrates various activities that constitute "engaging in business." Pet., App. A at 5a. The Court of Appeals applied Seattle Municipal Code 5.44.422(A) and SBTR 5-44-193A in order to determine whether interstate sellers who conduct business in Seattle are subject to tax. Pet., App. A at 16a-18a.

Second, there is nothing in WAC 458-20-103 in regard to interstate sellers that is not also contained in WAC 458-20-193, the equivalent of which the City *has* adopted.

Third, two pages prior to the purported "admission" quoted by Petitioners, the administrator, in fact, did *not* agree that Seattle could tax sales that did not occur in the City.

> Q. . . . Would you agree that there is the incident of the sale, which in a B&O tax is some form of engaging in business versus the measure, which is often, generally speaking, the price of the product or the service?
>
> A. True, but again, you can't separate them, because unless you do not have some kind of activity, I mean, i.e., delivery or a sale made, some kind of transaction made within that jurisdiction, you're not talking about anything, are you?

Chry. Tr. page 49, line 19 - page 50, line 5.

This case was tried on two theories only: 1) that Petitioners lacked substantial nexus with Seattle, and 2) even if they had nexus, this Court's decision in *Oklahoma Tax Comm'n v. Jefferson Lines, Inc.*, 514 U.S. 175, 115 S.Ct. 1331, 131 L.Ed.2d 261 (1995) signaled a change in the law that required apportionment of gross receipts taxes on sales as if they were net income taxes. Pet., App. D at 43a-44a, ¶¶ 13-15, Pet., App. E at 56a-57a, ¶¶ 13-15. Since Petitioners abandoned before trial their claim that the cars and parts were not delivered to Seattle, the place where the cars and parts were delivered was not an issue at trial or at the Superior Court on Writ of Review.

Only after the Washington Supreme Court rejected as "meritless" Petitioners' identical apportionment challenge to the State of Washington's gross receipts tax in *W.R. Grace & Co. – Conn. v. State, Dep't of Revenue*, 137 Wn.2d 580, 596-597, 973 P.2d 1011, 1018, 1019, *cert. denied*, 528 U.S. 950, 120 S.Ct. 371, 145 L.Ed.2d 290 (1999),[4] did Petitioners assert for the first time at the Court of Appeals that Seattle's tax system differed from the State's in that it taxed selling activities no matter where performed and so lacked internal consistency.[5]

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[4] "We believe the taxpayers reliance on *Jefferson Lines* is misplaced. Nothing in that case purports to overturn or limit *Tyler Pipe*, including *Tyler Pipe's* rejection of an apportionment challenge to Washington's B&O tax." Both Petitioners were parties in *W.R. Grace*, and were represented by the same counsel who represented them in this case. *See* Pet., App. A at 20a, n.66.

[5] Petitioners are not in fact faced with multiple taxation on their Seattle sales because Michigan excludes sales "taxable" in

Petitioners' Seattle Activities

Petitioners may not have offices in Seattle, but they engage in substantial business activity in the City nonetheless. In order to sell the cars and related parts and accessories to Seattle dealers, Petitioners send in sales, service, and parts managers on a systematic and regular basis. GM Tr. page 94, lines 5-16; page 114, line 15 - page 115, line 4; Chry. Exh. 20; Chry. Tr. page 82, lines 14-18. All told, GM's sales, service, and parts representatives had a combined average of over four hundred visits in Seattle per year with dealers, although GM does not maintain an office in the City. GM Exh. 48.

During their visits, the sales managers discuss market conditions, new products, and retail customer satisfaction levels. Findings of Fact ("FF") ¶ 11, Pet., App. D and E at 35a, 47a. The service managers review warranty work, discuss problems that may be occurring with a certain make or model of vehicle, and speak to dissatisfied retail customers about product quality. FF ¶ 12, Pet., App. D and E at 35a, 48a.

In 1996 alone, GM spent between $80,000 and $110,000 to send its representatives into the City. FF ¶ 21, Pet., App. D at 36a. Dennis Furris, the General Manager of Frederick Cadillac, summed up the importance of GM's activities in maintaining its market share in the City when he said " . . . the representative acts as a liaison

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other jurisdictions based upon the standard established by this Court in *Tyler Pipe*. Michigan Department of the Treasury, Administrative Bulletin 1998-1, CP Chry. Return to Writ at 000809-812.

between General Motors and the dealership, making sure that we [the dealer] are aware of current incentive programs and answering questions we may have regarding those programs." GM Exh. 37.

Petitioners also produce sales in Seattle through the warranty programs they offer through their Seattle dealers. The warranty programs "keep those customers coming back and get them to buy in the first place." Chry. Tr. page 97, line 21 - page 98, line 3. Chrysler paid Seattle dealers between $183,000 and $282,000 per month between December 1997 and February 1998 to perform warranty work on Chrysler's behalf. FF ¶ 21, Pet., App. E at 48a. Chrysler also implements local "Customer Satisfaction Boards" on which a Chrysler employee sits to help resolve customer complaints through negotiation and arbitration. Chry. Exh. 23.

Petitioners generate sales as well by participating in Seattle auto shows,[6] directing volume advertising at the Seattle market,[7] and through signage located in Seattle.[8]

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[6] FF ¶ 17, Pet., App. D at 36a. Also, Chrysler provides in Seattle interactive information displays that are staffed by its employees or agents. Chry. Tr. page 27, line 25 - page 29, line 21.

[7] In 1997 alone, GM directed just under six million dollars worth of its national advertising at the Seattle market. GM Exh. 39.

[8] Chrysler owns three permanent signs in Seattle. FF ¶ 7, Pet., App. E at 47a.

Proceedings Below

In 1996, the tax auditor discovered that Petitioners had been conducting business in Seattle without a license, and assessed the tax.[9] Petitioners' appealed and the Hearing Examiner determined that 1) Petitioners had substantial nexus with Seattle, and 2) *Jefferson Lines* had not changed the rules set out in *Tyler Pipe*. Pet., App. D and E at 44a, 56a, ¶ 14. The Superior Court affirmed, as did the Court of Appeals, judging that *Tyler Pipe* "holds directly to the contrary" of Petitioners apportionment theory. Pet., App. A at 20a.

On petition for review to the Washington Supreme Court, Petitioners abandoned their claim that their contacts with Seattle were insufficient to support taxation,[10] and requested review only of the issue of whether the City was required to cost apportion the selling tax base. The Washington Supreme Court denied review.

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[9] Seattle Municipal Code provides for a 10-year statute of limitations for persons who are discovered to have been operating illegally.

[10] "The automakers do not seek review of the Court of Appeals' decision that their limited physical presence in Seattle is sufficient to establish nexus." Petition for Review to the Washington Supreme Court, at 4, n.1.

REASONS FOR DENYING THE PETITION

I. THE COURT OF APPEALS DECISION IS CONSISTENT WITH THIS COURT'S DECISIONS ON APPORTIONMENT OF GROSS RECEIPTS TAXES ON SALES

For over a century, this Court has upheld nondiscriminatory gross receipts taxes on 100 percent of gross proceeds of interstate sales of goods imposed by the state of destination. *Tyler Pipe Indus., Inc. v. Washington Department of Rev.*, 483 U.S. 232, 107 S.Ct. 2810, 97 L.Ed.2d 199 (1987); *Standard Pressed Steel Co. v. Department of Rev.*, 419 U.S. 560, 95 S.Ct. 706, 42 L.Ed.2d 719 (1975); *General Motors Corp. v. Washington*, 377 U.S. 436, 84 S.Ct. 1564, 12 L.Ed.2d 430 (1964); *Field Enters., Inc. v. Washington*, 352 U.S. 806, 77 S.Ct. 55, 1 L.Ed.2d 39 (1956), *aff'g per curiam* 47 Wash.2d 852, 289 P.2d 1010 (1955); *Norton Co. v. Department of Rev.*, 340 U.S. 534, 71 S.Ct. 377, 95 L.Ed. 517 (1951); *International Harvester Co. v. Department of Treasury*, 322 U.S. 340, 64 S.Ct. 1019, 88 L.Ed. 1313 (1944); *Department of Treasury v. Allied Mills, Inc.*, 318 U.S. 740, 63 S.Ct. 666, 87 L.Ed. 1120, *aff'g per curiam* 220 Ind. 340, 42 N.E.2d 34 (1942); *Department of Treasury v. Wood Preserving Corp.*, 313 U.S. 62, 61 S.Ct. 885, 85 L.Ed. 1188 (1941); *Sonneborn Bros. v. Cureton*, 262 U.S. 506, 43 S.Ct. 643, 67 L.Ed. 1095 (1923); *Woodruff v. Parham*, 8 Wall. 123 (1886); *see also Westinghouse Electric v. King*, 678 S.W.2d 19 (Tenn. 1984), *appeal dismissed for want of a substantial federal question*, 470 U.S. 1075, 85 L.Ed.2d 131, 105 S.Ct. 1830 (1985); *Chicago Bridge & Iron Co. v. Department of Rev.*, 98 Wash. 2d 814, 659 P.2d 463, *appeal dismissed for want of a substantial federal question*, 464 U.S. 1013, 78 L.Ed.2d 718, 104 S.Ct. 542 (1983); *Stone v. Stapling Machs. Co.*, 220 Miss. 470, 71 So.2d 205,

appeal dismissed for want of a substantial federal question, 348 U.S. 802, 75 S.Ct. 31, 99 L.Ed. 633 (1954).

Tyler Pipe, *Standard Pressed Steel*, and *General Motors*, all upheld the validity of Washington's gross receipts tax measured by 100 percent of the sales price, and *General Motors* upheld the tax particularly as applied to one of the very Petitioners in this case, General Motors Corporation. Indeed, Petitioners recognize that the State of Washington's tax passes constitutional muster. Pet. at 7-8. Therefore, in order to conjure a federal case, Petitioners must distinguish Seattle's tax system from Washington's. The two systems, however, cannot be distinguished, as demonstrated by the fact that in attempting to make their case, Petitioners ignore entirely a relevant provision of Seattle law, SBTR 5-44-193A, that was applied to them.[11]

Seattle's wholesaling tax is identical in all relevant respects to the State of Washington's wholesaling tax at issue in *Tyler Pipe* in that the tax is measured by 100 percent of gross proceeds of sales only if a taxpayer has nexus and the goods are received in Washington. Therefore, the Court of Appeals decision affirming taxation is consistent with this Court's precedents that a tax on interstate sales measured by 100 percent of gross proceeds of sales is "apportioned exactly to the activities taxed." *Tyler Pipe*, 483 U.S. at 251, 107 S.Ct. at 2822, 97 L.Ed.2d 216 (1987); *Standard Pressed Steel*, 419 U.S. at 564, 95 S.Ct. at 709, 42 L.Ed.2d 719 (1975).

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[11] "Facts are stubborn things; and whatever may be our wishes, our inclinations, or the dictates of our passions, they cannot alter the state of facts and evidence." John Quincy Adams.

Petitioners face no risk of multiple taxation because the combination of 1) market-making activity and 2) receipt of the cars and parts sold because of it, occurs in only one place. No other state has jurisdiction to tax Petitioners' wholesale sales to Seattle dealerships. Petitioners also face no actual multiple taxation because their Washington sales are excluded from the Michigan tax base where they claim they conduct other "selling activities."

Given the operation of Seattle's tax system, none of Petitioners' cited cases conflicts with the Court of Appeals decision. None of those cases concerns gross receipts taxes on interstate sales where the taxpayer's activities in the jurisdiction made the market for sales of the goods delivered there.

Central Greyhound Lines v. Mealy, 334 U.S. 653, 68 S.Ct. 1260, 92 L.Ed. 1633 (1948) and *Gwin, White & Prince, Inc. v. Henneford*, 305 U.S. 434, 59 S.Ct. 325, 83 L.Ed. 727 (1939) concern taxation of services that are performed in multiple jurisdictions.[12] *Maryland v. Louisiana*, 451 U.S. 725, 101 S.Ct. 2114, 68 L.Ed.2d 576 (1981) concerns a first use tax on natural gas and, in any case, did "not determine the apportionment issue." *Id.*, 451 U.S. at 755, n.27. *ASARCO Inc. v. Idaho State Tax Comm'n*, 458 U.S. 307, 102 S.Ct. 3103,

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[12] Even in regard to multistate services, however, the combination of 1) delivery, and 2) partial performance, supports measuring the tax by 100 percent of the gross proceeds of sales. *Oklahoma Tax Comm'n v. Jefferson Lines, Inc.*, 514 U.S. 175, 186, 115 S.Ct. 1331, 1339-1340, 131 L.Ed.2d 261 (1995); *see also Western Livestock v. Bureau of Revenue*, 303 U.S. 250, 58 S.Ct. 546, 82 L.Ed. 823 (1938).

73 L.Ed.2d 787 (1982) and *Container Corp. of America v. Franchise Tax Bd.*, 463 U.S. 159, 103 S.Ct. 2933, 77 L.Ed.2d 545 (1983) both concern the application of unitary business principles to apportionment of net income. *Commonwealth Edison Co. v. Montana*, 453 U.S. 609, 101 S.Ct. 2946, 69 L.Ed.2d 884 (1981) concerns a severance tax.

II. THE APPEALS COURT DECISION DOES NOT CONFLICT WITH DECISIONS FROM OTHER STATES

Seattle is not aware of any court that has interpreted the Commerce Clause to require apportionment of gross receipts from sales where the taxpayer's activities in the taxing jurisdiction were significantly associated with making or holding the market for the sales of the goods delivered there. None of the cases cited by Petitioners has so held.

The California cases, *General Motors Corp. v. City of Los Angeles*, 486 P.2d 163 (Cal. 1971), on which Petitioners primarily rely, and *Volkswagon Pacific, Inc. v. City of Los Angeles*, 496 P.2d 1237 (Cal. 1972), are based, not on the Commerce Clause, but on provisions of the California State Constitution and the Equal Protection clause. *General Motors v. Los Angeles*, 486 P.2d at 169; *Volkswagon*, 496 P.2d at 1245.

General Motors v. Los Angeles itself belies the implication that California relies on Commerce Clause jurisprudence in requiring apportionment, specifically stating that federal law does not apply.

> In spite of our Shell decision the City continues to rely upon General Motors v. Washington,

> (1964) 377 U.S. 436, 84 S.Ct. 1564, 12 L.Ed.2d 430 for the proposition that an unapportioned tax is proper in these circumstances. It suffices to say that Shell, which was based primarily upon our interpretation of provisions of *the state Constitution, is controlling in this state to the extent that its requirements of apportionment are more stringent than those approved in General Motors v. Washington.*

General Motors v. Los Angeles, 486 P.2d at 171, n.13 (emphasis added).

At least one other court has rejected *General Motors v. Los Angeles* as Commerce Clause precedent precisely because in those cases "[t]he California Supreme Court applied California constitutional provisions forbidding extraterritorial application of the laws and guaranteeing equal protection, combined with the equal protection clause of the federal constitution, in considering whether there was discrimination against intercity commerce." *General Motors Corp. v. City of Kansas City, Missouri*, 1994 W.L. 49620 (Mo. App. W.D.) (unpublished) at 8.

Petitioners' implication that California's law on apportionment is required by the Commerce Clause[13] does not withstand scrutiny. The passage quoted simply acknowledges that the first case to rule that the California Constitution required apportionment of the sales tax

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[13] Pet. at 12-13, n.8.

base[14] looked to Commerce Clause cases to inform its construction of the California Constitution.

The cases from states other than California are equally distinguishable. In *M & Associates, Inc. v. Irondale*, 725 So.2d 592 (Ala. 1998), the City of Irondale included in its tax base gross receipts from all of the taxpayer's sales, including sales made from the taxpayer's facilities outside Alabama and delivered outside Alabama. In contrast, Seattle taxed only gross proceeds of sales resulting from Petitioners' market-making activities in Seattle and received in the City.

In *City of Winchester v. American Woodmark Corp.*, 471 S.E.2d 495 (Va. 1996), tax was imposed on the entire gross revenue of a business headquartered in Winchester, despite the fact that the taxpayer earned that income from operating 24 facilities in 13 different states. In Seattle, where tax is not imposed unless (1) a taxpayer's market-making activities in the City are significantly associated with its ability to effectuate the sale, and (2) the goods are received in Washington, a tax measured by the gross proceeds of sales is "apportioned exactly to the activities taxed." *Tyler Pipe*, 483 U.S. at 251, 107 S.Ct. at 2822, 97 L.Ed.2d 199 (1987), quoting *Standard Pressed Steel*, 419 U.S. at 564, 95 S.Ct. at 709, 42 L.Ed.2d 719 (1975).

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[14] *City of Los Angeles v. Belridge Oil Co.*, 271 P.2d 5 (Cal. 1954), wherein Los Angeles measured its tax by 100 percent of gross receipts from sales of goods that never entered the city.

III. THIS CASE PRESENTS NO ISSUES OF SIGNIFICANT PUBLIC IMPORTANCE

This Court has consistently held that a gross receipts tax measured by 100 percent of the proceeds of wholesale sales into the market state is inherently apportioned. While the question at one time was no doubt widely disputed, after years of application of that principle by this Court and numerous lower courts, and no action by Congress to change the rule, it is now settled law.

Petitioners attempt to demonstrate that apportionment of the sales tax base presents a constitutional question of great public importance by pointing to the fact that the City of Seattle asked the Court of Appeals to publish its decision. It did so, not because the apportionment issue was novel, but in order to discourage expensive and repetitive litigation of well-established law, as demonstrated by the Petitioners' failure to heed the Washington Supreme Court's ruling in *W.R. Grace* on the exact same claim. Motion to Publish at 6.[15]

Petitioners also suggest that State of Washington Excise Tax Advisory ("ETA") 543 demonstrates that there are more than 55 cities across the country that have tax

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[15] What the City actually wrote was: "the significant and recurring questions of nexus and apportionment", nexus being significant and apportionment being recurring. The City of Tacoma's declaration in support of the Motion to Publish, likewise, concerns itself primarily with the court's decision on nexus, review of which Petitioners have abandoned. *See Beck v. Washington*, 369 U.S. 541, 553-554, 82 S.Ct. 955, 961-962, 8 L.Ed.2d 98 (1962) (court will not review issues not raised at highest state court).

systems similar to that which they wrongly claim Seattle has. First, as explained above, Seattle's system is not as described by Petitioners. Second, the only "similarity" ETA 543 demonstrates about the tax systems listed in it to any other tax system is that all impose gross receipts taxes, as defined by Revised Code of Washington 82.04.440(4)(a) and Seattle Municipal Code 5.44.410.[16] ETA 543 does not, and does not purport to, imply anything about the structure, operation, or legality of those tax systems.[17]

Finally, Petitioners argue that other jurisdictions will use, and have used, the Court of Appeals decision as authority to impose unapportioned taxes and to subject taxpayers to the risk of multiple taxation. Pet. at 16, n.9. Neither source cited by Petitioners supports that contention. Both *Kmart Properties, Inc. v. Tax'n & Revenue Dep't*, Docket No. 21140 (N.M. Court of Appeals 2001) and the law review article by Mr. Rosen and Ms. Connell cite the Court of Appeals decision for its ruling on the substantial nexus issue, not apportionment. Seattle is not aware of any court that has cited, or any commentator that has discussed, the Court of Appeals decision on the well-settled issue of apportionment of the sales tax base.

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[16] *See* Seattle Municipal Code 5.44.418. The ETA informs taxpayers of eligibility for the multiple activities tax credit available to persons that sell the products they manufacture and pay gross receipts taxes on both manufacturing and selling.

[17] Indeed, as Petitioners point out, the Los Angeles tax system was ruled illegal. But the fact did not affect eligibility for the credit for taxes paid under that system.

CONCLUSION

For all of the foregoing reasons, the City of Seattle respectfully asks this Honorable Court to deny the Petition.

Respectfully submitted,

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APPENDIX A

Seattle Business Tax Rule:
5-44-193A Outbound interstate selling activity.

(1) Introduction. This rule explains the City's business tax applications to selling activities associated with the interstate sale of tangible personal property. It covers the business of selling outbound goods originating in this City to persons outside this state. This rule does not include import and export transactions (see Seattle Rule 5-44-193C).

(2) Definitions. As used in this rule, unless the context clearly indicates otherwise, the following terms mean:

(a) "Place of origin" means the state or place where a shipment of tangible personal property (goods) originates.

(b) "Place of destination" means the state or place where the purchaser/consignee or its agent receives a shipment of goods.

(c) "Delivery" means the act of transferring possession of tangible personal property. It includes among others the transfer of goods from consignor to freight forwarder or for-hire carrier, from freight forwarder to for-hire carrier, from one for-hire carrier to another, or from the for-hire carrier to consignee.

(d) "Receipt", "receives", or "received" means the purchaser, or an agent having authority of refusal or acceptance, taking physical possession of the goods or having physical dominion and control over the goods.

(e) "Agent" means a person authorized to receive goods with the power to inspect and accept or reject the goods.

(3) Outbound sales. The City of Seattle does not assess its retailing or wholesaling taxes on the sale of goods which originate in the City if receipt of the goods by the purchaser or its agent occurs outside Washington.

(a) If tangible personal property is associated with a sale generated from a place of business within the City and is received by the purchaser or its agent in this state, or the purchaser or its agent exercises, in this state, ownership over the goods inconsistent with the seller's continued dominion over the goods, the sale is subject to the Seattle business license tax under the retailing or wholesaling classification. The tax applies even though the purchaser or its agent intends to and thereafter does transport or send the property out-of-state for use or for resale, or for use in conducting interstate or foreign commerce. In determining whether a sale constitutes interstate commerce, it is immaterial that the contract of sale or contract to sell is negotiated and executed outside the state or that the purchaser resides outside the state.

(b) If the seller delivers goods to the purchaser who receives them at a point outside Washington, an interstate deduction may be taken under the retailing or wholesaling classification as applicable. The interstate deduction applies even in cases where the shipment is arranged through a for-hire carrier or freight consolidator or freight forwarder acting on behalf of either the seller or purchaser. It also applies whether the shipment is arranged on a "freight prepaid" or a "freight collect"

basis. The shipment may be made by the seller's own transportation equipment or by a carrier for-hire. For purposes of this section, a for-hire carrier's signature does not constitute receipt upon obtaining the goods for shipment unless the carrier is acting as the purchaser's agent and has express written authority from the purchaser to accept or reject the goods with the right of inspection.

(4) Proof of deductible outbound sales.

(a) If either a for-hire carrier or the seller itself carries goods for receipt at a point outside Washington, the seller is required to retain in its records documentary proof of the sales and delivery transactions, and that the purchaser in fact received the goods outside the state, in order to prove the sale is a tax deductible interstate sale. Acceptable proofs will be:

(i) The contract or agreement of sale indicating where acceptance will take place, if any, and

(ii) If shipped by a for-hire carrier, a waybill, bill of lading or other contract of carriage indicating the seller has delivered the goods to the for-hire carrier for transport to the purchaser or the purchaser's agent at a point outside the state with the seller shown on the contract of carriage as the consignor (or other designation of the person sending the goods) and the purchaser or its agent as consignee (or other designation of the person to whom the goods are being sent); or

(iii) If sent by the seller's own transportation equipment, a trip-sheet signed by the person making delivery for the seller and showing:

The seller's name and address,

The purchaser's name and address,

The place of delivery, if different from purchaser's address,

The time of delivery to the purchaser together with the signature of the purchaser or its agent acknowledging receipt of the goods at the place designated outside the state of Washington.

(b) Delivery of the goods to a freight consolidator, freight forwarder or for-hire carrier merely utilized to arrange for and/or transport the goods is not receipt of the goods by the purchaser or its agent unless the consolidator, forwarder or for-hire carrier has express written authority to accept or reject the goods for the purchaser with the right of inspection.

* * *

(6) Examples - outbound sales. The following examples show how the provisions of this rule relating to the interstate selling activity of tangible personal property will apply when the goods originate in the City (outbound sales). The examples presume the seller has retained the proper proof documents and that the seller did not manufacture, extract, or repair the items being sold.

(a) Company A is located in the City. It sells machine parts at retail and wholesale. Company B is located in California and it purchases machine parts from Company A. Company A carries the parts to California in its own vehicle to make delivery. The sale is not subject to the City's business tax because the seller delivered them

to a point outside Washington and buyer did not receive the goods in Washington. This sale is an interstate sale and deductible from gross revenue.

(b) Company A, above, ships the parts by a for-hire carrier to Company B in California. Company B has not previously received the parts in Washington directly or through a receiving agent. It is immaterial whether the goods are received at either Company B's out-of-state location or any other place outside Washington state. It is immaterial whether the shipment is freight prepaid or freight collect. Again, the City treats the transaction as a deductible interstate sale.

(c) Company B, above, has its employees or agents pick up the parts at Company A's Seattle plant and transports them out of Washington. The sale is fully taxable under the City's business tax because the purchaser received the parts here and this transaction is not considered an interstate sale.

(d) Company B, above, hires a carrier to transport the parts from the City. Company B authorizes the carrier, or another agent, to inspect and accept the parts and, if necessary, to hold them temporarily for consolidation with other goods being shipped out of Washington. This sale is taxable under the City's business tax. Again, the transaction is not considered an interstate transaction. Possession or receipt took place within Washington.

(e) The City of Seattle will not tax the transactions in the above examples (a) and (b) if Company A mails the parts to Company B rather than using its own vehicles or a for-hire carrier for out-of-state receipt. By contrast, the City will tax the transactions in the above examples (c)

and (d) if for some reason Company B or its agent mails the parts to an out-of-state location after receiving them in Washington.

(f) Buyer C who is located in Alaska purchases parts for its own use in Alaska from Seller D who is located in the City. Buyer C specifies to the seller that the parts are to be delivered to the water carrier at a dock in the City. The buyer has entered into a written contract for the carrier to inspect the parts at the Seattle dock. The sale is subject to the business tax because receipt took place in Washington. This transaction would have been deductible if the buyer had taken no action to receive the goods in Washington.